

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MDL No. 1643

IN RE: EDUCATIONAL TESTING
SERVICE PRAXIS
PRINCIPLES OF LEARNING
AND TEACHING: GRADES
7-12 LITIGATION

SECTION: R(5)

JUDGE VANCE
MAG. JUDGE CHASEZ

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER NO. 1

The cases listed on Attachment A may merit special attention as complex litigation. Accordingly, the Court enters the following Order.

1. This Order governs the practice and procedures in the actions transferred to this Court by order of the Judicial Panel on Multidistrict Litigation dated December 16, 2004. The transferred cases are listed on the attached Schedule A. These cases are consolidated for pretrial purposes. This Order also applies to related actions later filed in, removed to, or transferred to this Court.

2. *Initial Conference.* The Court will hold a conference in these proceedings on January 20, 2005 at 10:00a.m. in Courtroom C279, United States Courthouse, 500 Poydras Street, New Orleans, LA 70130.

(a) *Attendance.* To minimize costs and facilitate a manageable conference, each party is not required to attend the conference if parties with similar interests authorize an attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue or service.

(b) *Service List.* Until the initial conference, service of all papers, including this Order, shall be upon the persons shown on Attachment B, which consists of counsel who made appearances before the Judicial Panel on Multidistrict Litigation and other counsel who were served with papers filed with the JPML. Counsel on this list are requested to forward a copy of the Order to other attorneys who should be notified of the conference. The parties shall prepare a corrected service list at the conference, which shall include street and e-mail

addresses of counsel, as well as telephone and fax numbers.

3. *Purposes and Agenda.* The conference will be held for the purposes specified in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f). A tentative agenda is set out on Attachment C. Counsel are encouraged to advise the Court as soon as possible if there are items that should be added to the agenda.

4. *Preparations for Conference.*

(a) *Procedures for Complex Litigation.* Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* and to be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.

(b) *Initial Conference of Counsel.* Before the conference, counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of class action allegations, and motions under Rules 12 and 56.

(c) *Preliminary Reports.* Counsel for the plaintiffs and the defendants will separately submit to the Court by January 14, 2005, a brief written statement indicating their

preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings. The parties are limited to one such submission for all plaintiffs and one such submission for all defendants. The submission shall also contain the parties' proposals for the organization of counsel.

- (d) *List of Affiliated Companies and Counsel.* To assist the Court in identifying any problems of recusal or disqualification, counsel's statement shall include a list of all companies affiliated with the parties and all counsel associated in the litigation.
- (e) *List of Pending Motions.* Counsel's statement shall provide the Court with a list of all pending motions.
- (f) *List of Related Cases.* Counsel's statement shall list all related cases pending in state or federal court and their current status, to the extent known.

5. *Interim Measures.* Until otherwise ordered by the Court:

- (a) *Admission of Counsel.* Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of

local co-counsel is not required.

- (b) *Creation of Master File.* The Court has created a master file for the consolidated proceedings. All orders, pleadings, motions, and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent possible. Pleadings should be captioned *In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation* and should identify the master file number, *MDL 1643*. If generally applicable to all consolidated actions, they should include in their caption the notation that they relate to "ALL CASES" and be filed and docketed only in the master file. Documents intended to apply only to particular cases will indicate in their caption the case number of the case(s) to which they apply, and extra copies shall be provided to the clerk to facilitate filing and docketing both in the master case file and in the specified individual case file.
- (c) *Pleadings.* The defendants are granted an extension of time to respond by motion or to answer the complaints until a date to be set at the conference.
- (d) *Pending and New Discovery.* Pending the conference, all

outstanding disclosure and discovery requirements are stayed, and no further discovery shall be initiated. This order does not preclude voluntary, informal discovery regarding the identification and location of relevant documents and witnesses, nor does it prevent a party from voluntarily making disclosures or responding to an outstanding discovery request under Federal Rules of Civil Procedure 33, 34, or 36.

- (e) *Orders of Transferor Courts.* All orders by transferor courts that impose dates for hearings, pleading, discovery, or conferences are vacated.

6. *Applications for Lead and Liaison Counsel Appointments.* The Court will consider appointing Plaintiffs' lead counsel and/or a Plaintiffs' steering committee, as well as Plaintiffs' liaison counsel. Applications for these positions must be filed with the clerk's office on or before January 14, 2005. The court will consider only attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Applications should also set forth attorney's fee proposals, rates,

and percentages that applicants expect to seek.

New Orleans, Louisiana, this 4th day of January, 2005.

_____/s/ Sarah S. Vance_____
SARAH S. VANCE
UNITED STATES DISTRICT COURT

ATTACHMENT A

TRANSFERRED ACTIONS

Eastern District of Louisiana

Lois Adams, et al. v. Educational Testing Service, C.A. No. 2:04-1997

Christal Aguillard, et al. v. Educational Testing Service, C.A. No. 2:04-2122

James R. Johnson v. Educational Testing Service, C.A. No. 2:04-2291

Rolanda Thigpen v. Educational Testing Services, Inc., C.A. No. 2:04-2305

Middle District of Louisiana

Steven G. Miller v. Educational Testing Service, et al., C.A. No. 3:04-563

Western District of Louisiana

Shawn M. Gary, et al. v. Educational Testing Service, C.A. No. 2:04-1583

Ian Cohen, et al. v. Educational Testing Services, Inc., C.A. No. 2:04-1686

Northern District of Ohio

Katherine J. Brouse v. Educational Testing Service, C.A. No. 1:04-1599

Janet Riehle v. Educational Testing Service, C.A. No. 3:04-7430

ATTACH. A, CONT.

Southern District of Ohio

Paul A. Perrea, et al. v. Educational Testing Service, C.A. No.
1:04-492

Eastern District of Pennsylvania

Eric Rutledge, et al. v. Educational Testing Service, C.A. No.
2:04-3465

Michelle T. Kochensky v. Educational Testing Services, C.A. No.
2:04-3794

Raffael M. Billet v. Educational Testing Service, C.A. No. 2:04-
3795

ATTACHMENT B

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ATTACHMENT C

Agenda for Initial Conference

1. Appointment of Lead and Liaison Counsel
2. Service of Papers
3. Pretrial Schedule
 - (a) Consolidated Complaint, Amendment of Pleadings, Joinder of Parties
 - (b) Motion Practice: Deadlines, Hearings, and Briefs
 - (c) Discovery Plan and Schedule
 - (d) Class Certification: Briefs and Hearing
4. Role of Magistrate Judge
5. Coordination with Related Litigation in State Courts
6. Document Issues
7. Other Matters
8. Next Conference